

November 19, 2007

Marc Haston
1600 South County Road 280 West
Greensburg, Indiana 47240

Re: Formal Complaint 07-FC-323; Alleged Violation of the Access to Public Records Act by the City of Greensburg and Greensburg Board of Aviation Commissioners

Dear Mr. Haston:

This is in response to your formal complaint alleging the City of Greensburg (“City”) and Greensburg Board of Aviation Commissioners (“Board”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. A copy of the City’s response to your complaint is enclosed. It is my opinion that neither the City nor the Board violated the APRA by denying you access to confidential financial information obtained upon request.

BACKGROUND

In your complaint you allege that you submitted a request dated September 18, 2007 to the City. Specifically, you requested operational revenue forecasts and revenue history from airport operations for the Decatur Airport Corporation. The City responded to your request by letter from Mayor Frank Manus dated September 20. In that letter, the Mayor indicated he was in the process of fulfilling in the request. You were also sent a letter dated September 24 from William Ernestes of the Board, who indicated he had spoken with me and further indicated the information regarding Decatur Airport Corporation is confidential pursuant to I.C. §5-14-3-4(a)(5). You mailed your complaint on October 16, and I received it on October 19, alleging you have been denied access to records.

The City responded to your complaint by letter dated November 12 from attorney Stephen Taylor. Mr. Taylor indicates that the information requested was received as confidential information from the owners of the private corporation that primarily runs the business operations of the Decatur County Airport. He contends the corporation would not have provided the information unless it was to be kept confidential. Mr. Taylor contends the information was used by the officials of the Airport Commission in their analysis related to purchasing the airport. As such, Mr. Taylor contends the information is nondisclosable pursuant to I.C. §5-14-3-4(a)(5).

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. §5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

Confidential financial information obtained, upon request, from a person must be withheld. However, this does not include information that is filed with or received by a public agency pursuant to state statute. I.C. §5-14-3-4(a)(5). The information you requested may fit within this exception. Not all financial information in the possession of the City or Board is confidential financial information. If the information is received by the public agency pursuant to state statute, the exemption does not apply. It is my understanding the information at issue here was received upon request of the City or Board and was not required by state statute to be filed with or received by the public agency. If that is true, it is my opinion that neither the City nor the Board violated the APRA by withholding the information. The public agency bears the burden of proof to sustain the denial. I.C. §5-14-3-1.

CONCLUSION

For the foregoing reasons, it is my opinion that neither the City nor the Board has violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Frank Manus, Mayor, City of Greensburg
William Ernestes, Greensburg Board of Aviation Commissioners